FISCAL NOTE

Bill #: **HB0102**

Title: **Provide for public sale of surplus state land**

Primary Sponsor: **Stan Fisher**

Status: **As introduced (Revised)**

Sponsor signature Date

Dave Lewis, Budget Director Date

Fiscal Summary

	FY 2000 Difference	FY 2001 Difference
Expenditures:		
General Fund	179,808	267,062
State Special Revenue	314,063	276,956
Expendable Trust (08)	100,000	0
Revenue:		
General Fund	0	0
State Special Revenue	(2,000,000)	(2,000,000)
Expendable Trust (08)	2,300,000	2,300,000
Net Impact on General Fund Balance:	**(179,808)**	**(267,062)**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

Department of Natural Resources and Conservation

1. All existing statutes under Title 77, MCA, regarding state lands will apply to lands sold under this legislation. All sales are subject to existing statutory provisions including, but not limited to, State Land Board approval; advertisement of sale; compliance with Montana Environmental Protection Act (MEPA) and the Antiquities Act on each sale; all sales must be conducted through public auction; certain lands must be platted and subdivided before sale; and purchaser must pay 10% down at auction and the balance is due within 30 days.

2. The compilation of the inventory required will take a minimum of 1.00 FTE, grade 14, over the biennium to work with the other state agencies to compile a listing of the surplus real estate. Personal services (salary + benefits) of that grade 14 will be $26,366 + 7,646 in FY 2000 and $26,951 + 7,816 in FY 2001; start up cost of $3,500 (desk, chair, computer, file cabinet, etc.); and travel/communications $2,000/yr.
3. The costs of implementing the sales portion of this legislation is largely unknown due to the lack of knowledge of how much surplus real estate fits the definition. A grade 14 FTE will be required to carry out the actual sales. The costs of that sale FTE (personal services, start up and travel/communications) would be the same as projected in 2 above for the inventory FTE. It is expected that this FTE will process 15 sales annually. Additionally, the current operating costs (outside of personal services) to process a land sale under existing Title 77 statutes range from $1,400 to $14,000 depending on the size, location, and complexity of the sale. This range is based upon recent experience in selling various lands over the past two years. Using average values, an individual sale will cost $7,000. Operating costs identified for each individual sale include advertising ($250); appraisals $500 - $10,000 (avg $5,000); surveys $500 - $3000 (avg $1,500); and title reports $150 - $400 (avg $250).
4. The proceeds that will be derived from the individual land sales are unknown and virtually impossible to predict due to the wide variability in tract size, location and attributes of the individual properties. For the sake of producing this fiscal analysis, the department has assumed that the average sale will yield $20,000 in sale proceeds. However, it should be emphasized that this is an assumed average with no verifiable basis.
5. It is unknown how long it will take to accomplish the inventories required. The funding provisions in Section 8(3)(a) only provide funding after sales have been conducted and proceeds have been received. Therefore, the department assumes it will require funding from another source to implement this legislation until sales are actually occurring and to make up a shortage in funds required if the identified funding source is insufficient to fund the program. Since this surplus real estate belongs to the state in fee, it is assumed that the general fund would be the source of funding to make up shortages incurred.
6. Section 85-1-211(5), MCA, expressly stipulates how property associated with state water projects is to be dealt with in the event it is sold or otherwise disposed of. Therefore this act would not pertain to lands associated with state water projects.
7. The lands associated with abandoned state water projects that are targeted for disposal have been inventoried and are assumed to meet the definition of surplus property contained in this legislation.
8. Because the Water Resources Division currently has funding for surveys and appraisals of lands targeted for disposal, no additional funding will be needed for these purposes.
9. Because the department has established procedures for real estate sales, it is assumed that a broker would not be required as provided in Section 6.
10. The Trust Lands Management Division (TLMD) would administer Section 6 of this proposed legislation.
11. The Water Resources Division assumes no net fiscal impact to expenditures or revenues; however, the deposit of sales revenues into an interest-bearing trust account would reduce deposits in the Renewable Resource Loan and Grant state special revenue account as currently required under state law.

Department of Fish, Wildlife and Parks

12. FWP currently has varying management control over 575 individual sites encompassing approximately 500,000 acres of which over 250,000 acres of fee title land interests and an unknown number of improvements would be subject to this proposal.
13. FWP would be required to report annually to DNRC with an inventory listing of all its real estate ownership including land and improvements, their present and anticipated futures uses, and changes of

land use and improvements. Initially this would require review of the status of each site ownership interest, the improvements located thereon, and an extensive report of legal descriptions. In following years, it would require annual review of real estate status by regional personnel and reports to FWP central staff for relay to DNRC.

14. It will take 2.00 FTE, grade 10, property technicians to do the initial review and then a 0.50 FTE, grade 10, property technician to prepare the annual follow-up.
15. Surplus property sales would be coordinated by DNRC and FWP to implement fee appraisals, surveys and title insurance (land valued over $50,000), legal and title review, deed preparation and recordation, subdivision approval. Although not clearly designated, it is likely these costs would fall to FWP under rules promulgated for implementation.

Department of Revenue

16. It is assumed that the Department of Revenue will do 15 appraisals per year. The department appraises property for property tax purposes. The bill requires the Department to conduct fee type appraisals like those that are conducted by lending institutions for residential and commercial properties. For the department to determine the current market value of property appraisal, research must be conducted and databases must be built and maintained. Per the bill, the department will be required to certify an appraiser to conduct this type of appraisal. It is estimated the combination of training, research, and conducting the appraisals will require 1.00 FTE. Personal services cost are estimated to be $30,997 in FY 2000 and $30,786 in FY 2001. It is estimated that operating expenses would be $7,742 in FY 2000 and in FY 2001. Equipment costs are estimated to be $7045 in FY 2000. (MDOR)

Department of Corrections

1. The Department of Corrections assumes that land currently owned surrounding secure correctional facilities would not fall under property designated to be surplus. This property is necessary to the safe operation of the facilities as well as to provide public safety. This land owned by the department may also be needed in future years for expansion of these facilities. The department does own some land that is not near these facilities. This land could be deemed surplus under this bill and sold with no fiscal impact to the Department of Corrections.
2. The department assumes that any property currently owned which it is leasing and receiving interest income from would not be sold under this bill; therefore, the current level of income would not change.
3. In order to comply with the annual inventory requirements, the department would require $50,000 in order to contract for the management of all properties, including researching water and mineral rights, as well as providing legal descriptions, legal surveying and preparation of deeds and aiding with any land transactions.

Department of Transportation

Construction

1. This bill will supercede and negate the Department of Transportation's current program to dispose of excess land. The current program is anticipated to generate annually about $1.5 M. However, most of these funds are encumbered with federal aid requirements since federal funds were used to purchase the land originally.
2. Under 77-01-701(3)(c) MCA, all lands inside MDT right-of-way are excluded from this bill.
3. To comply with Sec. 4 – Inventories, MDT would need, on a onetime basis, a staff of about 5.00 FTE at approximately the grade 14 level to perform the necessary research.
3. After initial establishment of the required inventory 1.00 FTE, grade 14, would be required to maintain the program.

4. Each FTE will require about $6,000 worth of equipment to perform the required duties. ($4,000 for a PC, an additional $2,000 for peripheral equipment such as printers, desks etc.)
5. Based on historical data, each FTE will generate about $5,000 worth of operating expense to cover travel to various sites, small contracts for surveying etc.

Maintenance

7. Land -- All maintenance site documentation is currently in hardcopy files. Each file contains copies of deeds, legal descriptions, and other pertinent information. Currently right-of-way (R/W) is entering all department owned property into a searchable data base. MT PRRIME is also addressing state owned assets, i.e., land and facilities. If the R/W and/or MT PRRIME databases do not meet the intent of the legislation, the department would have to reenter more than 400 parcels of land i.e. maintenance sections sites, stockpiles, radio towers, and rest area sites into a format that meets the intent of the legislation. Multiple databases will have to be maintained for the same information. The cost to reenter all lands and meet yearly reporting requirements is included. (0.25 FTE yearly)
8. Facilities -- The maintenance division would have to provide a list, every year, of all improvements on its land. The department currently has a facility inventory program and the Department of Administration is implementing a statewide facilities program. MT PRRIME is addressing a statewide asset system. Again, if the current database information could not be electronically combined into the new database all information would have to be reentered resulting in two or more databases with the same information.
9. Future use -- The program would have to provide a summary of the current or planned use of real estate every year. Time will have to be spent updating current or planned use of each parcel of land.
10. Land acquisition -- The department has a backlog of maintenance sites that need to be relocated. Sites are programmed into the Long-Range Building Program generally after land has been acquired. It currently takes 18-24 months to secure land for maintenance sites. Land for sites may be purchased more than two years before the site is actually used which could be problematic with Section 5 (2) (b).
11. Site values -- The maintenance program estimates that 5 sites, including land and facilities, will be surplused per year at an average sale value of $100,000 or more.

FISCAL IMPACT:

Department of Natural Resources and Conservation

	FY 2000 Difference	FY 2001 Difference
FTE	2.00	2.00
Expenditures:		
Personal Services	$52,732	$53,902
Operating Expenses	109,000	109,000
Equipment	7,000	0
Benefits	15,292	15,632
TOTAL	$184,024	$178,534
Funding:		
General Fund (01)	84,024	178,534
Expendable Trust (08)	100,000	0
TOTAL	$184,024	$178,534

Revenues:		
Expendable Trust (08)	2,300,000	2,300,000

Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	(84,024)	(178,534)
Expendable Trust (08)	2,200,000	2,200,000

FISCAL IMPACT:

Department of Fish Wildlife and Parks

Expenditures:	FY2000 Difference	FY2001 Difference
FTE	2.0	0.5
Personal Services	49,476	12,369
Operating Expenses	15,000	15,000
TOTAL	$64,476	$27,369
Funding:		
State Special Revenue (02)	64,476	27,369
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	(64,476)	(27,369)

FISCAL IMPACT:

Department of Revenue

	FY2000 Difference	FY2001 Difference
FTE	1.00	1.00
Expenditures:		
Personal Services	$30,997	$30,786
Operating Expenses	7,742	$7,742
Equipment	7,045	0
TOTAL	$45,784	$38,528
Funding:		
General Fund (01)	$45,784	$38,528
Net Impact to Fund Balance (Revenue minus Expenditures:		
General Fund (01)	($45,784)	($38,528)

FISCAL IMPACT:

Department of Corrections

	FY2000 **Difference**	FY2001 **Difference**
Expenditures:		
Operating Expenses	50,000	50,000
Funding:		
General Fund (01)	50,000	50,000
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	(50,000)	(50,000)

FISCAL IMPACT:

Department of Transportation

	FY2000 Difference	FY2001 Difference
FTE	5.25	1.25
Expenditures:		
Personal Services	$194,587	$ 44,587
Operating Expenses	25,000	5,000
Equipment	30,000	6,000
TOTAL	$249,587	$55,587
Funding:		
State Special Revenue (02)	249,587	55,587
Revenues:		
State Special Revenue (02)	(2,000,000)	(2,000,000)
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	(2,249,587)	(2,055,587)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Department of Fish, Wildlife and Parks

1. Possible increase in county services required to provide survey and subdivision reviews, listing displays, maps and information on available surplus land, appraisal services by local DOR employees; loss of established open space areas.

LONG-RANGE IMPACTS:

Department of Natural Resources and Conservation

1. Divestiture of surplus state real estate and establishment of a new state special revenue account.

Department of Transportation

2. The highways state special revenue account will lose the revenues from the sale of surplus land that had previously been used for federal match to build and maintain roadways.

TECHNICAL NOTES:

1. Section 8(3)(a) states that "The first $100,000 of sale proceeds may be used to reimburse the department for the cost of implementing and administering [sections 1 through 8] for fiscal years 1999 and 2000. For subsequent fiscal years, administration costs must be included in the department's budget request." It appears that the fiscal years referenced above may need to be fiscal years 2000 and 2001. Authority for the costs associated with this legislation is not available during the 1999 biennium.
2. With the first $100,000 being deposited to the trust account as required in Section 8(3)(a) and projected expenditures in excess of $100,000 the first year, DNRC will require an additional $100,000 of general fund the second year.

Department of Natural Resources and Conservation

1. The DNRC-TLMD is currently working with the Legislative Council and other state agencies to compile an inventory of all state-owned lands. Therefore, the inventories required under Section 4 would be a duplication of current effort. The TLMD has agreed to bring a report to the upcoming legislative session regarding the status of this current inventory and seek further guidance from the Legislature on how to proceed. Preliminarily, the inventory appears to be a time consuming task due to the nature of the current records maintained by the individual agencies and lack of resources within all agencies to compile the inventory. The development of the inventory is likely to take most of the next biennium even if additional funding is provided. The current inventory under assembly would provide the information requested under Section 4 except for a description of any improvements on the land.
2. The TLMD assumes the exclusion in Section 2. Definition of Real Estate, was meant to apply to all trust lands which would include initial 1889 granted lands, in lieu selected lands, farm foreclosure lands, the beds of navigable waterways, abandoned navigable riverbeds, and islands within navigable waterways. The department recommends that the definition of real estate be written to coincide with the current language in 77-2-351, MCA ("…land that is not granted to or held by the state in trust for the support of the common schools, for a state institution, or for another specific purpose"….).
3. Section 5(2)(a) appears to conflict with Section 6(2)(c). If a lease agreement is in place, and returning revenues, wouldn't that constitute the real estate being utilized by the state?
4. Section 6(2)(a) is not consistent with current departmental procedures for sale of non-trust land, which allows for the issuance of a grant deed.
5. Under Section 6(2)(c) clarification is needed to explain how a lease agreement survives. Does this mean that all provisions of a lease agreement including rental and renewal provisions must survive? Requiring such provisions to survive may lower the sales value or totally deter any possible purchasers.
6. Section 6(2)(d) conflicts with 77-2-304, MCA, which reserves all mineral rights to the state in any sales.
7. Section 6(4). It is unclear as to where a real estate broker fits into the sale process if all other existing Title 77 sales statutes are followed. If the state is required to conduct the appraisals, surveys and other necessary reviews, provide listings, advertise, and conduct the auctions, why would a real estate broker be entitled to a commission?
8. Section 7(1)(b). The Department of Commerce certifies appraisers in the state of Montana, not the Department of Revenue.

9. Section 7(1)&(3). Experience has shown that Department of Revenue assessment of agricultural land values often do not accurately reflect the actual sale value. The basis of valuation of some classifications of land for property tax assessment is not based upon the sale of comparable property. Therefore, it is anticipated that the DNRC will be increasing the asking price of many properties above the DOR or county assessor values to ensure that the state will realize the optimum value of the real estate to be sold.
10. Section 8.(3)(a). This provision only funds the DNRC functions dealing with surplus properties if a sale is conducted and proceeds are received. Therefore, the inventory phase is unfunded and if properties go unsold there is not funding to reimburse the department for its expenses. Additionally, once surplus lands have been identified it is likely that another state agency or other public entity may seek to acquire the land for use under the provisions of 77-2-302 or 77-2-351, MCA. Would disposition of a parcel of surplus real estate under a 77-2-302 or 77-2-351, MCA, violate the intent of this legislation?
11. The definition of surplus property is ambiguous, and thereby makes it difficult to determine if state-owned water projects are included. For instance, under the definition of surplus in Section 5, state-owned water projects are not used by the state directly; rather the water users who have contractual obligations to administer the projects could be construed as the users rather than the state.
12. This legislation conflicts with the provisions of 85-1-211, MCA, which outlines how the DNRC may sell, transfer to water users' associations, abandon, lease or rent, or otherwise dispose of any right-of-ways, easements, properties, or interests attached to state-owned water projects without regard to other laws providing for the disposition of state property. There is additional conflict with determination of market value.
13. Section 6(2)(a) is not consistent with current department procedures for the sale, transfer and disposition of state-owned water projects which allow for the use of a quit claim deed.
14. Section 8 appears to conflict with 85-1-211 and 85-1-604, MCA, which currently stipulates that money collected under 85-1-211, MCA, is deposited in a state special revenue account created by 85-1-604, MCA. For example, during the current biennium the sale of Theboe Lake property and Deadmans cabin sites resulted in deposits of $279,500 in the Renewable Resource Grant and Loan state special revenue account.

Department of Fish Wildlife and Parks

15. Proposed legislation is in conflict with existing statutes regarding the sale of department property interests and use of proceeds, 87-1-601 (5), MCA.
16. Proposed legislation is in conflict with current federal statutes regarding sale of FWP property interests and use of proceeds. Use of sale proceeds received from the sale of property acquired with federal aid and license dollars for anything other than fisheries and wildlife management is considered a diversion of federal funds possibly jeopardizing $10,800,000 of federal aid annually.
17. It is very possible that 90 days would not be long enough to close a real estate transaction on surplus tracts that would require surveying or subdivision approval prior to closing. This would probably include anything under 160 acres.

Department of Revenue

18. Section 7(1)(c) says that a member of the appraisal institute must appraise those parcels "only if the county assessor considers the real estate to be worth $100,000 or more." Since there are now only 5 elected county assessors, this subsection would appear to only apply to those 5 counties.
19. The bill requires the appraisal to be conducted by a certified appraiser. Assessment staff, county assessors included, do not meet this requirement.
20. Section 7(1)(b) of the bill goes on to state that if the parcel is determined to be worth $15,000 or more, it "must be appraised by a licensed appraiser or an appraiser certified by the department of revenue". The

Department of Commerce, Board of Real Estate Appraisers is responsible for licensing appraisers. The Department of Revenue certification only certifies its appraisers are certified to do tax appraisals.

Department of Corrections

21. The bill is unclear as to what property would be considered surplus, especially surrounding correctional facilities.

Department of Transportation

22. Much of the land purchased by MDT was originally acquired using Federal Aid Highway funds. By agreement with FHWA, and as allowed by the current federal transportation bill TEA-21, MDT is currently allowed to dispose of excess land as long as the proceeds are returned to the highway program. If revenue derived from the sale of excess land that FHWA participated in were diverted to other uses, FHWA would likely require reimbursement.